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Manufacturer's Verdict Vacated Because of Discovery Abuses

Roccaforte v. Nintendo of America, Inc.,
01-210 (La. App. 5 Cir. 11/15/01) ___ So.2d ___

Parents brought suit on behalf of their 13-year-old son, an avid video game player, who suffered violent seizures after playing a video game on his Super Nintendo Entertainment System. Plaintiffs sought to prove that the seizures were induced by the Nintendo video games played by their son, that Nintendo failed to provide proper warnings regarding the possible dangers of seizure, and that Nintendo could have designed games that would have not induced seizures. Nintendo contended that the seizures were unrelated to the video game play, that it provided adequate warnings of triggering of seizure in seizure-disposed persons in the documents accompanying its product, and that the child and his parents failed to heed the warnings.

After seven days of trial in the 24th Judicial District Court for the Parish of Jefferson, the jury returned a verdict in favor of the manufacturer. The jury found that the manufacturer did not provide an adequate warning concerning the risk of seizures but determined that this was not the proximate cause of the child's injuries. The jury also found that the product was not unreasonably dangerous in design. The trial court entered a judgment in favor of the manufacturer based on the jury verdict.

The appeals court panel of Judges Gothard, Edwards, and Chehardy vacated the judgment and concluded that Nintendo's persistent failure to fully respond to discovery, including two findings of contempt made by the district court (including the ex parte redaction of documents by Nintendo) and the late production (on the third day of trial) of over 200 pages of documents concerning consumer complaints, was prejudicial to the presentation of the plaintiffs' case. The court found that the defendant also gave incorrect and incomplete responses to discovery and, even when ordered to supplement its responses, the defendant "delayed and obfuscated, adhering to defenses that a rational fact-finder could very well have concluded were contradicted by the documents defendant eventually was forced to disclose during trial. Prior to trial defendant unilaterally redacted information and documents it provided the plaintiffs, without attempting to obtain a protective order from the court first and without notifying plaintiff it was censoring its responses." Included in the materials were numerous complaints Nintendo had received from customers regarding seizures that occurred after video game play and information that the manufacturer had advised certain customers which video games were more likely to result in seizures when played.

The appeals court concluded that the trial court's award of monetary sanctions for the discovery abuses was insufficient and ordered a new trial. Sanctions "could not offset the harm done to plaintiffs' case by defendant's deliberate withholding of information about the numerous complaints of video game induced seizures that defendant eventually was forced to disclose. Further, defendant's actions not only included failure to comply with discovery requests, but also disobedience of court orders. A severe sanction is warranted in addition to the monetary sanctions. Accordingly, the trial court's limitation of the penalty to only monetary sanctions was a clear abuse of discretion." While granting a new trial, the appeals court denied the plaintiffs' request to strike the manufacturer's defenses or grant a default judgment against the defendant.

Identification of Cart Manufacturer Sufficient to Defeat Summary Judgment

Anderson v. International Industries, Inc.,
00-2554 (La.App. 4 Cir. 11/14/01), ___ So.2d ___

Louisiana's Fourth Circuit Court of Appeal has reversed summary judgment in favor of a defendant who had convinced the trial court that the plaintiff could not identify it as the manufacturer of the medical utility cart which fell on her breaking her leg.

The plaintiff Dr. Deborah Anderson was injured while attempting to move the large wheeled cart out of her way. Instead of rolling, as she pulled the cart towards her, the cart tipped over and fell on top of her. Two photographs were taken by hospital security on the scene, but neither showed the cart in full, with only a small part of the frame and wheel assembly of the cart being visible at the side of one photograph.

Dr. Anderson sued Baxter Healthcare as the cart's manufacturer. Baxter filed a motion for summary judgment asserting that Dr. Anderson would be unable to carry her burden of proof that Baxter manufactured the cart. The trial court agreed and granted Baxter's summary judgment.

The Fourth Circuit reversed finding the following evidence offered by plaintiff sufficient at the summary judgment stage on the issue of product identification: 1) plaintiff identified photographs taken of carts at the hospital a year following her accident as identical to the cart which fell on her; 2) Baxter's expert on product identification admitted that the carts in the photos taken the year after plaintiff's accident were manufactured by Baxter; 3) plaintiff's photography expert found that the carts in the later photographs were identical to the fragment of the cart in the photograph taken immediately after the accident.

The Fourth Circuit found that plaintiff had carried her burden of offering some evidence to prove that Baxter manufactured the product. The Fourth Circuit further criticized the trial court for not accepting the plaintiff's affidavits as being true, stating that it was inappropriate to make judgments concerning the credibility of affiants on summary judgment.

This case illustrates the use of expert testimony when considering a summary judgment motion – a practice formally approved by the Louisiana Supreme Court less than one year ago in *Independent Fire Ins. Co. v. Sunbeam Corp.*, 99-2181, 99-2257 (La. 2/29/00), 755 So. 2d 226.

Fiduciary Shield Doctrine Protects Seller's Officers from Jurisdiction in La.

Fuller v. American Recreational Vehicles,
01-0664 (La.App. 3 Cir. 12/12/01) ___ So.2d ___

Fuller, an Allen Parish resident sued in Allen Parish seeking to rescind his purchase of a German recreational vehicle from a Texas corporation located in Beaumont, Texas. In addition to suing the corporate seller Tri-City, Fuller sued David, Angeline and Daniel Ayres. David and Angeline Ayres, corporate officers of Tri-City, argued that the Louisiana court lacked personal jurisdiction over them. The trial court granted their exceptions of lack of jurisdiction and the Third Circuit affirmed.

The trial court found that David and Angeline were protected by the fiduciary shield doctrine since their only contacts with Louisiana were rooted in their respective corporate capacities. The trial court considered the possibility that Tri-City, which purchased and imported the Clou Liner from a German manufacturer and then sold it to Fuller, might be found to be a manufacturer under La. R.S. 9:2800.53(1)(d) (concerning status of importer of a product of an alien manufacturer). Regardless of that outcome, in order to find personal jurisdiction over the Ayres individually the plaintiff had to demonstrate minimum contacts of the Ayres with Louisiana. Finding that neither David nor Angeline had any personal contacts with Louisiana, the Third Circuit upheld the trial court's ruling dismissing them from the case for lack of personal jurisdiction.

- *Madeleine Fischer*

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Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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